IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2131 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALITADEVI PARK COOPERATIVE HOUSING SOCIETY LTD.

Versus

GANPATBHAI AMBALAL PATEL

Appearance:

1. Special Civil Application No. 2131 of 2004

MRS KANAN R SHAH for Petitioner No. 1

MR RAVINDRA SHAH for Petitioner No. 1

MR SN THAKKAR for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/12/2004

ORAL JUDGEMENT

1. The petitioner Society has preferred this petition in order to quash and set aside the order dated 23/12/1998, at Annexure-A to the petition, the order dated 31/03/2000, at Annexure-C to the petition and also the order dated 03/09/2003, at Annexure-D to the petition and has requested to remand the matter back to the Board of Nominees, Ahmedabad, for the purpose of deciding Lavad Suit No.1136 of 1998 in accordance with law.

2. The petitioner is a Cooperative Society registered under the provisions of the Gujarat Cooperative Societies Act, 1961, (for short, "the Act") and the Gujarat Cooperative Societies Rules, 1965 (for short, "the Rules"). The land of the petitioner Society was included in the Town Planning Scheme which was allotted to it by the Ahmedabad Urban Development Authority (for short, "the AUDA").

3. The brother of the respondent herein, who was the Chairman of the Society at the relevant point of time, permitted the respondent to put up construction in a strip of land admeasuring 710 sq.yards. By letter dated 03/01/1996, the respondent herein asked the petitioner Society to hand over the said part of the land. Pursuant to the above, the respondent executed a Banakhat in favour of a third person agreeing to sell the said land to him. The petitioner Society preferred suit being Lavad Suit No.171 of 1998 against the respondent and the said third party. On 29/09/1996, the petitioner Society in its Annual General Meeting removed the respondent as a Member of the Society. Feeling aggrieved by the said action, the respondent preferred Lavad Suit No.1136 of 1998 before the Board of Nominees. The Board of Nominees, by order dated 23/12/1998, at Annexure-A to the petition, disposed of the said lavad suit.

4. Pursuant to the above, the petitioner Society preferred appeal being Appeal No.195 before the Cooperative Tribunal. The Tribunal vide its order dated 03/09/2003, at Annexure-D to the petition, dismissed the appeal preferred by the petitioner Society. Hence, this petition.

5. I have heard learned counsel for the parties and have gone through the orders passed by the Board of Nominees as well as by the Tribunal. The Board of Nominees had allowed the Lavad Suit preferred by the respondent herein on the ground that the original plaintiff, i.e the respondent herein, was not given any opportunity, as is provided under the provisions of the said Act. Moreover, the decision was not even sent for the approval of the District Registrar.

6. Having perused the relevant documents on record, I am of the view that no fruitful purpose will be served if the matter is remanded back to the Board of Nominees, inasmuch as even if it is assumed that Notice was given, then also the formality regarding 3/4th majority and approval of the District Registrar was not sought.

Therefore, the said Resolution can be said to be a Resolution only on paper. Hence, the order passed by the Board of Nominees is just and proper and no interference is called for in this petition by this Court. The Tribunal was justified in confirming the said order passed by the Board of Nominees. I find no illegality in the orders passed by both the Court's below. Hence, the petition is required to be dismissed.

7. For the foregoing reasons, the petition is dismissed. Rule is discharged with no order as to costs.

(K. S. Jhaveri, J.)

pravin/